IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.308 OF 2006

IN

NOTICE OF MOTION NO. OF 2006

IN

L.C.SUIT NO.1568 OF 2006

WITH

CIVIL APPLICATION NO.394 OF 2006

Rajesh Pandharinath Mogare ...Appellant

Versus

The Municipal Corporation of

Gr.Mumbai ...Respondent

.....

Mrs.A.S.Malvankar i/b Mrs.Shubha Amarnath

for Appellant.

Mrs.Geeta Joglekar for Respondent.

.....

CORAM: A.M.KHANWILKAR, J.

APRIL 26, 2006.

P.C.

1. Heard Counsel for the parties.

2. Admit. Mrs.Joglekar waives notice for the Respondent.

3. As short question is involved, Appeal is taken up for final disposal forthwith, by consent.

4. This Appeal from Order takes exception to the Judgment and Order passed by the City Civil Court, Mumbai dated 19th April 2006 in Notice of Motion No.1570 of 2006 in L.C. Suit No.1568 of 2006 refusing to grant ad-interim relief. The Court below has observed that the documents relied upon by the Appellant do not pertain to suit premises and none of them are prior to 1964. So far as the latter observation is made, the opinion of the Trial Court may be prima facie correct. However, insofar as the first observation recorded by the Trial Court that the documents do not pertain to suit structure is incorrect. This is so because the Appellant has relied on ration card No.912164 which refers to the existence of earlier ration card issued sometime in February 1968. The ration card relied upon refers to structure on

Sumitra Niwas Plot, Park Cross Road, Vile Parle (East), Mumbai 57. The suit notice however describes the offending structure situated on Compound Rosewood Apartment. The Plaintiff in Para 3 has asserted that the structure was earlier known as Sumitra Niwas. All these aspects will have to be considered at the hearing of the Notice of Motion. The fact remains that the document such as ration card pressed into service indicate the existence of suit structure at least since 1968.

5. Be that as it may, for the purpose of granting ad-interim relief, the documents produced were sufficient for the time being. The Appeal therefore succeeds. Impugned order is set-aside and instead, ad-interim relief as prayed by the Appellant is granted to operate during the pendency of the Notice of Motion. The Notice of Motion may be expeditiously disposed of, preferably by end of September 2006.

6. Parties to exchange pleadings in the said Notice of Motion. Needless to observe that the Trial Court may decide the said Notice of Motion on

its own merits in accordance with law, uninfluenced by any observations made in the impugned order or for that matter, the present order.

7. Appeal and the accompanying Civil Application disposed of on the above terms.

A.M.KHANWILKAR, J.